

**701—10.110(423A) Interest and penalty.**

**10.110(1)** *Computation for tax due after December 31, 1979, but before January 1, 1985.* The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed. Section 422.58(1) of the Iowa Code provides a penalty for failure to file a permitholder's monthly tax deposit or a return or, if a permitholder fails to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return. Only the penalty for a failure to file a return will be added when both a failure to file a return and a failure to remit at least 90 percent of the tax due or to pay less than 90 percent of the tax required to be shown on the return occurs. The penalty for failure to pay at least 90 percent of the tax due is 5 percent of the tax due. Penalty is computed on the amount required to be shown as tax with the filing of the deposit or return. For purposes of computing the penalty in case of failure to file or to pay at least 90 percent of the amount of tax required to be shown on the return, the tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be the percentage which had accumulated when the initial penalty was assessed and paid on the delinquent return.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. Interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposit was required to be filed until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

**10.110(2)** *Computation for tax due on or after January 1, 1985, but before January 1, 1987.* Iowa Code section 422.58(1) provides for a penalty of 10 percent for the failure to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return. For purposes of computing the penalty in case of failure to pay at least 90 percent of the amount required to be shown on the return, the tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown on the return is not subject to waiver.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). See subrule 10.41(4) for examples of computation of penalty and interest for tax periods ending before January 1, 1991. See subrule 10.6(5) for examples of penalty computation for tax periods beginning on or after January 1, 1991.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. See rule 701—10.2(421) for the statutory interest rate.

**10.110(3)** *Computation for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991.* Iowa Code section 422.58(1) provides for a penalty of 15 percent for the failure to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of the tax required to be shown on the return. For purposes of computing the penalty in case of failure to pay at least 90 percent of the amount required to be shown on the return, the tax will be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown on the return is not subject to waiver.

All payments must be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). See subrule 10.41(6) for examples of computation of penalty and interest.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. See rule 701—10.2(421) for the statutory interest rate.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 423.40 and 2005 Iowa Code Supplement section 423A.1.